Office-Supreme Court, U.S.
FILED
APR 2 9 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No. 1268

ROBERT JOYCE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Matthew P. Boylan
Counsel for Petitioner
11 Commerce Street
Newark, New Jersey

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provision	2
Statement of Facts	3
Reasons for Granting Writ:	6
1. As to the sufficiency of the Affidavit to justify issuance of a search warrant to search petitioner's automobile.	
Conclusion	8
Appendix:	
A. Opinion of United States Court of Appeals	1a
B. Judgment of United States Court of Appeals	2a
Cases Cited:	
Barsden v. United States (4th Cir. 1959) 271 F 2d 325	6
Giordenello v. United States, 357 U.S. 480 (1958)	7
Burge v. United States, 333 F 2d 210, 212-218 (Ninth Cir. 1964)	8
Preston v. United States, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964)	8
Caldwell v. United States, 338 F 2d 385, 887	8

Opinions Below

The opinion of the Court of Appeals is not yet reported. It is printed in Appendix A, infra, p. 1a.

Jurisdiction

The judgment of the Court of Appeals was entered on February 28, 1966, (App. B, infra, p. 2a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether an affidavit to justify the issuance of a search warrant must relate the object of the search to a permitted constitutional purpose.

Constitutional Provision

The Constitutional Provision is the Fourth Amendment to the United States Constitution which reads as follows:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

See also Rule 41, Fed. R. C.R.M. Procedure, 18 U.S.C.

Statement of Facts

Petitioner was convicted on each count of a three-count indictment for uttering and possessing counterfeit twenty-dollar reserve bank notes.

Count One of said indictment charged the defendant with unlawfully uttering a counterfeit bill on September 14, 1962, at the Cat and Fiddle Bar in Union City, New Jersey. Count Two charged him with possessing a counterfeit bill on September 15, 1962, in the Union City Police Headquarters in Union City, New Jersey. Count Three charged him with unlawful possession of twelve counterfeit bills in his 1949 Chevrolet automobile on September 17, 1962.

The first witness produced by the Government was Anthony Acocella. In September of 1962, he was employed as a bartender in the Cat and Fiddle Bar located at 615 Paterson Plank Road, Union City, New Jersey (40a). On September 14, 1962, while at work Robert Joyce came into the bar and ordered a drink, handing the bartender a twenty-dollar bill (41a).

The second witness produced by the government was Victor Santasieri, owner of the Cat and Fiddle Bar. On September 14, 1962, he was in his establishment on two occasions. When he returned the second time at around 12 o'clock midnight he took a bill from the top of the cash register (45a); this bill he subsequently initialed in the police station. After concluding that the bill was "questionable" he obtained the assistance of several local police officers who proceeded to walk toward the Orchid Club (58a) in the direction of which he had seen the defendant proceed, although the walking was with the defendant's back toward the witness. In the Orchid Club, Detective Mona approached the defendant

and told him that Santasieri had claimed that he had passed twenty-dollar bill. The defendant denied this and was removed in custody to the Union City Police Headquarters. Santasieri also testified that in the statement to the police he made mention of Joyce's remark as to a five-dollar bill and not a twenty-dollar bill as revealed by his testimony in Court (71a).

Detective Francis Mona testified that he went into the Orchid Club and Mr. Santasieri pointed out Joyce as the person who passed the counterfeit bill (77a). Detective Mona admitted that when Joyce left the Orchid Club with the police he was in custody and that he couldn't leave if he wanted to because in effect he had been arrested (91a, 93a). At the time of the defendant's arrest the bartender was not present (89a) and no arrest warrant had been issued.

Detective Mona further testified that on September 15, 1962, in the early morning hours while at the police station another twenty-dollar bill was removed from the personal effects of Robert Joyce (88a). This gave rise to the second count of the indictment.

Detective Albert Cerulli of the Union City Police Department testified that on September 17, 1962, while armed with a search warrant he went to the vicinity of 805 Summit Avenue, Jersey City, New Jersey, to search a vehicle allegedly owned by the defendant. The vehicle was a 1949 black Chevrolet sedan, 4 door with registration GJI 624 NJ (100a) registered in the name of the defendant. He testified that this vehicle was parked in violation for three days and that he and Agent Thomas Wooge of the United States Secret Service went to search same. He stated that upon opening the door "Agent Wooge and myself found twelve twenty-dollar bills on the front seat of the car" and "we also found the registration and

the title to the car in the glove compartment (101a). The bills were located in a brown paper envelope. He admitted on direct examination that the twelve bills and the title and registration were taken and held by Agent Wooge (102a). He also stated that after "we made a search of the car it was towed to Corsis Garage. This is a garage located in Union City where we impound cars that are towed in" (65a). There was no question from the answers propounded by the witness that the car was towed to Corsis Garage at any time except after it had been searched on Summit Avenue (103a to 104a). The detective admitted that prior to obtaining a search warrant he had made a sworn affidavit to the magistrate in the Municipal Court of the City of Union City. The affidavit justifying the issuance of the search warrant read in part:

> "Based on the facts of the defendant telling a lie about his car and his evasiveness in answering questions and the identification as he being the one to pass a bogus bill and the finding of another bogus bill on his person I believe the defendant has bogus bills in his car Reg. AJI 624 NJ a 1949 Chev. which has been towed to Corsis Garage at 2205 Summit Ave." (18a).

Agent Wooge testified that at around 10 o'clock or 10:30 A.M. on September 17, 1962, "we began a search of the car" (131a). He stated that he did not see the search warrant nor was he shown the same but was told that the same existed (149a). He admitted that he participated in the search (150a) and stated that he opened the glove compartment. He testified "yes, I did find the bills in the car" (156a).

The defendant had made a motion to suppress all evidence seized by the police authorities in a pre-trial proceeding (5a et seq.) and also objected to the admissibility of the various governmental exhibits prior to and at the time of them

being offered on behalf of the government. In the Government's brief at the time of the pretrial motion to suppress, it was conceded, "that at the time the vehicle was towed away, the Municipal officer had no reason or authority to search the car or seize articles contained therein for the purpose of criminal prosecution." The motion to suppress was denied and the defendant's objections at trial were unsuccessful.

At the end of the Government's case, the defendant made a motion for judgment of acquittal, which was denied by the Court. Likewise, at the conclusion of the entire case, another motion for judgment of acquittal was made by the defendant, which was also denied by the Court.

Reasons for Granting Writ

An affidavit to justify the issuance of a search warrant must relate the object of the search to a permissible constitutional purpose. There was no reason to believe that there was any connection between the automobile which was searched and the crime for which the defendant was arrested.

The writ of certiorari should issue because of a conflict between the Court of Appeals for the Third Circuit and the Court of Appeals for the Fourth Circuit with respect to the question of proof necessary to justify the issuance of a search warrant. In the case of Barsden v. United States (4th Cir. 1959) 271 F 2d 325, the Court of Appeals for the Fourth Circuit reversed a counterfeiting conviction on the grounds of insufficiency in the underlying affidavits supporting the issuance of the writ. The conflict between the Third Circuit in this case and the Fourth Circuit in Barsden reflects a differing standard of what is necessary

which he was arrested. Yet there is no necessary relationship between the use of an automobile and the utterance of counterfeit money. The essential element of time which would connect the offense with the use of an automobile to implement the commission of the offense is absent. Burge v. United States, 333 F 2d 210, 212-218 (Ninth Cir. 1964) cf. Preston v. United States, 376 U.S. 364, 84 S. Ct. 881, 11 L. Ed. 2d 777 (1964); Caldwell v. United States, 338 F 2d 385, 887.

Conclusion

For the reasons set forth in this petition, the writ of certiorari should be granted.

Respectfully submitted,

Matthew P. Boylan
Counsel for Petitioner

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15434

UNITED STATES OF AMERICA

v.

ROBERT JOYCE,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Argued January 4, 1966

Before Biggs, Ganey and Freedman, Circuit Judges

OPINION OF THE COURT
(Filed February 28, 1966)

Per Curiam.

A review of the extensive record in this case and an examination of the briefs of the parties and consideration of the oral arguments demonstrate no error in the proceedings in the court below. Consequently, the judgment of conviction will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals
For the Third Circuit.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15,434

UNITED STATES OF AMERICA

vs.

ROBERT JOYCE,

Appellant.

(D. C. Criminal No. 95-63)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Present: Biggs, Ganey and Freedman, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed May 5, 1965, and entered May 6, 1965, be, and the same is hereby affirmed.

ATTEST:

IDA O. CRESKOFF

Clerk

February 28, 1966.

The evidence showed that shortly before midnight on Friday, September 14, 1962, petitioner purchased a drink at a tavern in Union City, New Jersey, with a twenty dollar bill, for which he received change (R. 41a).[1] Pursuant to standing orders concerning the handling of bills of large denominations, the bartender placed the twenty dollar bill on top of the cash register drawer to be checked by the tavern owner (R. 43a). Five minutes later the owner, Santasieri, arrived, and observed petitioner, whom he knew, leaving his establishment and proceeding in the direction of another tavern (R. 56a-57a). The bartender gave Santasieri the bill, which was the only one to be examined (R. 53a, 55a). Using a magnifying glass and flashlight, Santasieri inspected the bill (Gov't Exh. 1), and became suspicious of its authenticity. He hurried outside to a patrol car parked in front of his tavern, and informed the policeman of the passage of a counterfeit twenty dollar bill in his tavern. Two detectives accompanied Santasieri and the policeman to another tavern, where they arrested petitioner (R. 58a-60a, 77a). Petitioner was taken to the police station, where, after being advised of his rights, he denied passing the note. He stated that he had arrived in Union City by bus, and had stopped at Santasieri's tavern to have one drink, which he paid for with a five dollar bill. Petitioner was told to place his effects upon a counter. Among his possessions was another counterfeit bill which bore the

---

[1] "R" references are to the "Appendix to Appellant's Brief," containing the indictment and the transcript of trial, which has been filed with the Clerk of this Court.

same serial number as the one negotiated in Santasieri's tavern (Gov't Exh. 2, R. 80a, 142a). In addition, petitioner had keys to an automobile which he said belonged to his brother-in-law (R. 84a).

During the next two days Union City police discovered that a car parked illegally near Santasieri's tavern was owned by petitioner. On Monday, September 17, Detective Cerulli obtained a search warrant (App., *infra*, pp. 5-7) and, together with a federal Secret Service agent, conducted a search of the car (R. 100a-104a, 130a-131a). On the front seat the officers found a payroll envelope containing twelve more counterfeit twenty dollar bills, ten of which bore the same serial number as Government Exhibits 1 and 2 (R. 143a).

Petitioner's sole contention is that the search of his automobile, which resulted in the discovery of the counterfeit bills that were the subject matter of count 3, was unlawful. The contention is plainly without merit.[2] In addition, since petitioner's convic-

---

[2] The search warrant was properly issued by a State magistrate. It was based upon an affidavit by Detective Cerulli that he was assigned to investigate petitioner's case and was aware of two incidents of possession of counterfeit notes; that although petitioner told Cerulli that he had come to Union City by bus, petitioner's car was found illegally parked in the town; and that on these facts he believed that there were bogus bills in the car. The magistrate found probable cause to believe that petitioner had violated a State law prohibiting the possession of any counterfeit "medium of exchange". N.J. S.A. 2A:109-2 (R. 18a-19a). Thus here, unlike *Baysden* v. *United States*, 271 F.2d 325 (C.A. 4), relied upon by petitioner, the agent in obtaining the warrant disclosed the information he possessed, much of it obtained through personal observation and inter-

tion on counts 1 and 2 was not based on the evidence discovered in the search of the automobile, and he received equal concurrent sentences on all counts, there is no occasion for this Court to determine the legality of that search. *Sinclair* v. *United States*, 279 U.S. 263, 299; *Lawn* v. *United States*, 355 U.S. 339, 359.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

FRED M. VINSON, JR.,
Assistant Attorney General.

BEATRICE ROSENBERG,
MERVYN HAMBURG,
Attorneys.

MAY 1966.

---

view with the petitioner and the report of another policeman. See *United States* v. *Ventresca*, 380 U.S. 102; *Porter* v. *United States*, 335 F.2d 602 (C.A. 9), certiorari denied, 379 U.S. 983; *United States* v. *Bowling*, 351 F.2d 236 (C.A. 6), certiorari denied, 383 U.S. 908.

APPENDIX

AFFIDAVIT.

September 17th, 1962

COUNTY OF HUDSON
STATE OF NEW JERSEY

vs.

ROBERT JOYCE, DEFENDANT

Albert Cerulli, being of full age and duly sworn according to law, upon his oath deposes and says:

I am a detective of the Union City Police and am assigned to investigate the passing of counterfeit bills by Robert Joyce age 26 of 503 Valley Road, West Orange, N. J. who was arrested at 12:20AM Sept. 15th, 1962 at the Transfer Station. The defendant was identified as passing a bogus $20- bill in a tavern and upon being searched at Police Headquarters another bogus $20- bill was found on his person.

When taking a statement from Robert Joyce he told me that he arrived in Union City on a bus and that he did not come in an auto. On the morning of September 17th, Officer Louis Kominek on duty checking parking meters reported a car in violation at 805 Summit Ave. A teletype revealed that it belonged to Robert Joyce who was in the City Jail.

Based on the facts of the defendant telling a lie about his car and his evasiveness in answering questions and the identification as he being the one to pass a bogus bill and the finding of another bogus bill on his person I believe the defendant has bogus bills in his car Reg. GJI 624 NJ a 1949 Chev. which has been towed to Corsis Garage at 2205 Summit Ave. I request a warrant be issued to search said vehicle for

bogus bills or other evidence pertaining to counterfeit money.

ALBERT CERULLI
Detective Albert Cerulli

Subscribed and sworn to before me this 17 day of Sept. 1962.

FRANK G. HAHN,
Judge Union City Municipal Court.

SEARCH WARRANT.

MUNICIPAL COURT OF THE CITY OF UNION CITY, COUNTY OF HUDSON, STATE OF NEW JERSEY.

STATE OF NEW JERSEY

vs.

ROBERT JOYCE, DEFENDANT

Search Warrant General

To the Sheriff, or any Constable, Marshal, or Police Officer of said County, or to any Officer or Trooper of the New Jersey State Police:

WHEREAS, a verified complaint having been this day made before this court by Det. Albert Cerulli of the Police Dept. of Union City, County of Hudson, State of New Jersey, and there is probable cause for believing the allegations of said complaint that: Bogus bills are secreted in the automobile of the defendant, a 1949 Chevrolet Reg. #G.J.I.-624 N. J. and that he has reasonable cause to suspect, and does sus-

pect that said goods and chattels are concealed in above named auto.

YOU ARE THEREFORE COMMANDED, in the name of the State of New Jersey, to make immediate search of the person of the defendant and, in the daytime, of the auto above situated and described, for the said Bogus Bills; and if you find the same, or any part thereof, that you secure the same and bring it or them forthwith before this court with the body of the defendant, to be dealt with according to law.

Signed and sealed this 17 day of Sept. 1962.

FRANK G. HAHN
Judge of the Municipal Court of the City of Union City, County of Hudson, N. J.

(SEAL)

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 210119 821